

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

LEIGH KING, *Plaintiff/Appellant*,

v.

ANTHONY CHANDLER and LISA CHANDLER, and CHANDLER
CONSTRUCTION, INC, *Defendants/Appellees*.

No. 1 CA-CV 17-0115
FILED 3-29-2018

Appeal from the Superior Court in Yavapai County
No. P-1300-CV-201600679
The Honorable Patricia A. Trebesch, Judge

AFFIRMED

COUNSEL

Leigh King, Phoenix
Plaintiff/Appellant

Law Office of David W. Smith, Phoenix
By David W. Smith
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Maria Elena Cruz joined.

WEINZWEIG, Judge:

¶1 Leigh King appeals the superior court's order dismissing her complaint with prejudice. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 This is a landlord-tenant dispute. King alleges she leased a house from Anthony and Lisa Chandler who failed to disclose and refused to repair a defective waste system in the house before unlawfully evicting her. King first sued the Chandlers in Mayer Justice Court, but abandoned the lawsuit without informing the justice court or the Chandlers, purportedly based on telephonic direction from an unnamed justice court clerk. Unaware that King had moved on, the justice court held an uncontested trial nearly three months later and dismissed her complaint without prejudice. King never moved for reconsideration or appealed the decision.

¶3 King again sued the Chandlers four months later in Yavapai County Superior Court. She alleged nearly identical claims to those in the justice court, but added Chandler Construction, Inc. as a third defendant. The Chandlers and Chandler Construction (collectively, "the Chandlers") then moved to dismiss the lawsuit pursuant to Rule 12(b)(6), Ariz. R. Civ. P., because King was not a party to the lease agreement and thus not a tenant under the Landlord Tenant Act, and her claims were barred under the doctrine of *res judicata* after she abandoned her first lawsuit. King never responded. The superior court granted the motion and dismissed the second lawsuit with prejudice "[a]fter considering the Motion, and noting no opposition from the Plaintiff." King never moved for reconsideration or relief from judgment in the superior court, but instead filed this appeal.

¶4 We have jurisdiction over King's timely appeal pursuant to Ariz. Const. art. VI, § 9, and A.R.S. § 12-2101(A)(1).

DISCUSSION

¶5 We review for an abuse of discretion when the superior court grants a motion to dismiss after the non-moving party fails to timely respond. *Strategic Dev. & Constr., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 64-65, ¶ 16 (App. 2010).

¶6 The superior court did not abuse its discretion in granting the motion to dismiss. A non-moving party must respond to a motion to dismiss within 10 days after it is served and the superior court may summarily grant the motion if no response is filed. Ariz. R. Civ. P. 7.1(a)(3), (b)(2); *Strategic Dev. & Constr., Inc.*, 224 Ariz. at 64-65, ¶¶ 16-17. King filed no response in opposition to the motion to dismiss. The superior court thus exercised its express authority to grant the motion and dismiss the lawsuit. Ariz. R. Civ. P. 7.1(b)(2); *Strategic Dev. & Constr., Inc.*, 224 Ariz. at 65, ¶ 17.¹

¶7 King argues her failure to respond should be excused because she never received the motion. We reject that argument for two independent reasons. First, the Chandlers properly served the motion to dismiss via regular mail to King's last known address. Indeed, the Chandlers used the very address that King identified on the face of her complaint. Ariz. R. Civ. P. 5(c)(2)(C). The date and manner of service are indicated with a certificate of service on the motion's final page in accordance with Ariz. R. Civ. P. 5(c)(3). Second, King could have and should have raised the argument in the superior court and afforded the court an opportunity to correct any asserted defects. She might have filed a motion for reconsideration, for instance, or moved for relief from the judgment. She did not. The argument is waived on appeal. *Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) ("Because a trial court and opposing counsel should be afforded the opportunity to correct any asserted defects before error may be raised on appeal, absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal.").

¹ We recognize that King represented herself in the justice court, the superior court and here, but "a party who conducts a case without an attorney is entitled to no more consideration from the court than a party represented by counsel, and is held to the same standards expected of a lawyer." *Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, 287, ¶ 16 (App. 2000). We thus hold King "to the same familiarity with court procedures and the same notice of statutes, rules, and legal principles as is expected of a lawyer." *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12 (App. 1999).

KING v. CHANDLER, et al.
Decision of the Court

¶8 King similarly argues the superior court erred in dismissing her complaint with prejudice because the Chandlers never served the motion to dismiss and King is being denied “her day in court.” But King waived the arguments by not raising them below, *id.*, and the motion was properly served, Ariz. R. Civ. P. 5(c)(2)(C).

CONCLUSION

¶9 For the foregoing reasons, the superior court properly dismissed King’s complaint with prejudice. We affirm.



AMY M. WOOD • Clerk of the Court
FILED: AA